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IN THE

Supreme Court of the United States

NO. 391, OCTOBER TERM, 1964.

DEMOCRATIC COUNTY COMMITTEE OF PHILADELPHIA, on Behalf of MICHAEL A. MUSMANNO, Petitioner,

v.

COUNTY BOARD OF ELECTIONS OF PHILADELPHIA COUNTY, Respondent.

MOTION OF CHARLES S. HELMIG FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE

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Charles S. Helmig respectfully moves this Honorable Court to enter an Order granting him leave to file a brief as *amicus curiae* in the above captioned proceeding, and particularly to present the basic and fundamental issue of whether or not Hon. Michael A. Musmanno, petitioner herein, was even qualified to be a candidate in the controversial Primary Election, and in support hereof it is averred:

1. Charles S. Helmig is a citizen, a registered voter in Allegheny County, Pennsylvania, and a steel broker with offices at Pittsburgh, Pennsylvania.

2. The Petition for Writ of Certiorari filed on behalf of Michael A. Musmanno fails to disclose the fact that at all times involved herein he is and was an Associate Justice of the Supreme Court of Pennsylvania and thus subject to the Canons of Judicial Ethics, adopted by that Court as well as by this Honorable Court.

3. It is provided in Canon 30 of the Canons of Judicial Ethics, "While holding a judicial position he should not become *an active candidate either at a party primary* or at a general election for any office other than a judicial office. If a judge should decide to become a candidate for any office not judicial, *he should resign* in order that it cannot be said that he is using the power or prestige of his judicial position to promote his own candidacy or the success of his party." (Emphasis supplied.)

4. On or before February 18, 1964, petitioner Musmanno became a candidate for the United States Senate; lost the Primary Election held on April 28, 1964; and as a matter of record herein has been litigating ever since.

5. According to said Canon 30, Mr. Justice Musmanno should have resigned from the Supreme Court of Pennsylvania not later than February 18, 1964. Contrarily, however, he continued as an active member of that Court, hearing arguments during the March Term and rendering decisions thereon up to the present time.

6. A relevant question which should be presented herein, but has not been, is whether or not Mr. Justice Musmanno was qualified to run for the said political office, by reason of his failure to have resigned as a Justice of the Pennsylvania Supreme Court. It is an elementary maxim that "Equity looks upon that as done which ought to be done". Consequently, if this Honorable Court should apply the equitable maxim, Mr. Justice Musmanno has not been a member of the Supreme Court of Pennsylvania since February 18, 1964; and if the said maxim is not held to be applicable, then he remains a member of that Court, but has been and is unqualified as

a political candidate. This Honorable Court's determination of that fundamental and basic issue would render all of the other questions presented herein moot.

7. The foregoing leads to the nature of your applicant's interest in this proceeding. Mr. C. S. Helmig is the plaintiff-appellant in Appeals Nos. 91 and 92, March Term, 1964, in the Supreme Court of Pennsylvania against Rockwell Manufacturing Company and Bethlehem Steel Company. After the arguments had thereon during the March Term at Pittsburgh, Mr. Justice Musmanno on June 1, 1964, entered erroneous Orders dismissing those Appeals, accompanied by an "Opinion" from which it was evident that the jurist failed to discuss or adjudicate any of the issues before the Court, sanctioning severe and serious deprivations of property and other important rights without due process of law. In the assumpsit action against Rockwell, your applicant was deprived of a jury verdict in the amount of $177,811.20, with interest, through fraud; and in the trespass action against Rockwell and Bethlehem, your applicant was illegally deprived of his right to a trial for substantial compensatory and exemplary damages.

8. In view of the foregoing, upon a determination that Mr. Justice Musmanno then was not a member of the Pennsylvania Supreme Court through the application of the aforesaid equitable maxim, then and in that event your applicant herein as appellant therein will become entitled to a reargument of his Appeals followed by the entry of Orders of Court accompanied by an Opinion which should comply with Canons 19, 20 and 22 of the Canons of Judicial Ethics as well as the usual and accepted practice, under which circumstances your applicant would prevail.

9. The applicant's requests for consent to file a brief as *amicus curiae* have been opposed by attorneys for the petitioner, the respondent, and petitioner's adversary candidate, Genevieve Blatt. Hence this Motion under Rule 42.

Respectfully submitted,

PAUL GINSBURG,
Counsel for Movant.
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